SERVED: January 31, 1994

NTSB Order No. EA-4065

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 18th day of January, 1994

DAVID R. HINSON, Administrator, Federal Aviation Administration, Complainant, v. RICHARD DEAN HORDON, Respondent.	Docket SE-11908

OPINION AND ORDER

Respondent has appealed from the oral initial decision issued by Administrative Law Judge Joyce Capps at the conclusion of a hearing held on March 10, 1992.[1] In that decision the law judge found that respondent violated 14 C.F.R. 43.13(b) and 43.15(a)(1)[2] by approving a PA 28 R180 for return to service

[1] Attached is an excerpt from the hearing transcript containing the oral initial decision.

[2] These regulations provide as follows:

after an annual inspection when that aircraft did not comply with an airworthiness directive (AD). She dismissed the other violations alleged in the complaint, and modified the sanction from a 120-day suspension of respondent's mechanic certificate and inspection authorization (IA), to a suspension of 45 days. The Administrator has not appealed from the law judge's dismissal of the other charges or from the reduction in sanction. As discussed below, respondent's appeal is granted and the law judge's findings of violation are reversed.

It is undisputed that AD 77-12-06 requires that Hartzell propellers such as the one installed on the PA 28 aircraft here at issue be removed, inspected, and (if necessary) reworked or replaced "prior to accumulating those time intervals . . . since new or last complete overhaul specified in Hartzell Service Letter 61B . . . *or later FAA approved revision(s).*" (Exhibit A-

(..continued)

> **§ 43.13 Performance rules (general).**
> * * *
> (b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).
>
> **§ 43.15 Additional performance rules for inspections.**
>
> (a) *General*. Each person performing an inspection required by Part 91, 123, 125, or 135 of this chapter, shall --
> (1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements;
> * * *

4, emphasis ours.) It is also undisputed that in connection with respondent's annual inspection of the aircraft on August 9, 1990, he did not comply with this AD even though the then-current Hartzell Service Letter 61Q, issued March 12, 1990, specified 60 calendar months as the maximum time interval for its accomplishment (Exhibit A-5), and some 67 calendar months had passed since the aircraft's propeller had last been overhauled. However, it is also undisputed that the time interval specified in the Service Letter prior to revision 61Q was five calendar years and that, under that prior standard, the aircraft would not have been out of compliance with the AD at the August 9, 1990, annual inspection.

At the hearing, respondent testified that at the time he did the annual inspection on August 9, 1990, the commercial microfiche service to which his maintenance facility subscribes showed Service Letter 61P, containing the five calendar year interval, as the current version, although it is undisputed that it had actually been superseded by Service Letter 61Q, dated March 12, 1990. Respondent explained that, while his microfiche service was quite prompt in updating ADs -- which are promulgated and disseminated by the FAA -- documents such as Service Letters, which are issued by manufacturers, might be updated only once or twice a year. Nonetheless, respondent testified that he relies on the service because "it's the best on the market." (Tr. 171, 156.)

Respondent stated, and the Administrator did not disagree,

that there is no requirement for accessory manufacturers like Hartzell to promptly notify anyone, for example a commercial subscription service, of changes to their Service Letters. (Tr. 148, 156, 168.) Respondent further opined that it might take six months to a year for an accessory manufacturer to provide revisions to the FAA or to a subscription service. (Tr. 148, 156, 168.)

Respondent testified, and the FAA inspector seemed to confirm, that it is common industry practice to rely on commercial services for pertinent and current information such as ADs and Service Letters. (Tr. 146-7, 162-3, 87-9, 175-7.) Indeed, the FAA inspector conceded that he himself relies on the same commercial service subscribed to by respondent for current Service Letters, and agreed that a mechanic such as respondent should be able to rely on such a service. (Tr. 89, 175.) However, the inspector hastened to add that he would nonetheless expect a mechanic or IA to "do everything he could to ascertain that [a Service Letter] has not been changed, whether it be calling [the FAA] or calling the manufacturer, anything he has to do to ensure that that's the current letter in effect." (Tr. 90.)

In affirming the violations against respondent, the law judge acknowledged, and apparently credited, respondent's testimony that the microfiche service upon which he relied in determining the AD requirements did not include the then-current

Service Letter 61Q.[3] (Tr. 204.) However, she went on to indicate that, "in view of the fact that [respondent] knew that this [subscription] company was always late in getting down any AD changes,"[4] he should have contacted the propeller manufacturer directly to ascertain whether the Service Letter, which she noted had been revised several times since 1977, had been updated since the version appearing in his microfiche service. (Tr. 205.) We disagree.

We are satisfied that respondent did all that could reasonably be expected of him to determine the requirements of the AD here at issue. In view of the fact that the microfiche service subscribed to by respondent is commonly recognized in the industry as an acceptable means for maintaining current information,[5] and accepting the law judge's apparent credibility determination that respondent relied on the out-of-date Service Letter contained in that service as of August 9, 1990, we cannot find that respondent was remiss in his duties as a mechanic or an

[3] Although the Administrator argues that respondent's testimony on this point was not credible, we cannot hold that the law judge's implicit acceptance of that testimony was arbitrary, capricious, or an abuse of discretion. Administrator v. Smith, 5 NTSB 1560, 1563 (1986). Accordingly, we will defer to her credibility determination.

[4] We note that the law judge mischaracterized respondent's testimony on this point. While respondent stated that Service Letters might be updated only once or twice a year, he did not indicate that his subscription service was "always late" in disseminating AD changes. To the contrary, he testified that ADs were updated every two weeks. (See Tr. 148, 168.)

[5] The FAA's regulatory scheme does not appear to prescribe any particular manner for obtaining Service Letters and similar documents.

IA. We might reach a different conclusion if there were some specific reason, other than respondent's general recognition that manufacturer-issued documents are not updated as frequently as FAA-generated documents, for respondent to doubt the currency of this particular Service Letter. However, there is no such evidence in this record.[6] In our judgment it would be unduly burdensome to require mechanics and IAs to contact the manufacturer of each aircraft part which is the subject of a Service Letter or similar document, to insure that all the information provided by their subscription service is current.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted; and

2. The law judge's finding that respondent violated 14 C.F.R 43.13(b) and 43.15(a)(1), and the suspension of respondent's mechanic certificate and IA, are reversed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

[6] We disagree with the Administrator's suggestion that the Service Letter's history of past changes obligated respondent to double check the accuracy of the version in his microfiche. As it is not uncommon for such documents to be periodically revised, the Administrator's position would lead to an unduly broad and burdensome obligation.